

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Spectrum Sharing Plan Among)	
Non-Geostationary Satellite Orbit Mobile)	IB Docket No. 02-364
Satellite Service Systems in the 1.6/2.4 GHz)	
Bands)	
)	
Amendment of Part 2 of the Commission's)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz for)	
Mobile and Fixed Services to Support the)	
Introduction of New Advanced Wireless)	
Services, including Third Generation Wireless)	
Systems)	

To: The Commission

**REPLY OF
BELLSOUTH CORPORATION, BELLSOUTH WIRELESS CABLE, INC. AND
SOUTH FLORIDA TELEVISION, INC.
TO CONSOLIDATED OPPOSITION OF GLOBALSTAR LLC**

BellSouth Corporation and its wholly-owned subsidiaries BellSouth Wireless Cable, Inc. and South Florida Television, Inc. (collectively, "BellSouth") hereby submit their Reply to the Consolidated Opposition to Petitions for Reconsideration filed by Globalstar LLC ("Globalstar Opposition") in the above-captioned proceeding.¹

Globalstar continues to rely on faulty assumptions and misinterpretation of Commission policy in pressing its request for the Commission to impose restrictions on the rights of Broadband Radio Service ("BRS") licensees that would preclude meaningful use of spectrum reallocated to Channel BRS-1. Rather than adopt Globalstar's transparent

¹ Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, *Report and Order, Fourth Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 13356 (2004) ("*Order*"). Notice of the filing of petitions for reconsideration of the *Order* was published in the Federal Register on October 12, 2004. See 69 Fed. Reg. 60626-27 (2004). On October 27, 2004, BellSouth filed its Opposition ("BellSouth Opposition") to Globalstar's Petition for Reconsideration ("Globalstar Petition"). Globalstar filed its Opposition on the same day.

proposal, the Commission should instead grant the Petition for Reconsideration filed by the Wireless Communications Association International, Inc. (“WCA”) and eliminate the co-primary allocation for CDMA Mobile Satellite Service (“MSS”) in the 2496-2500 MHz band.²

Discussion

The pleadings in this proceeding unanimously concur that the Commission’s decision to require sharing of the 2495-2500 MHz band will result in harmful interference to both BRS-1 and MSS operations.³ To resolve this situation, Globalstar stands alone in proposing a self-proclaimed “geographical separation” solution – to eliminate BRS-1 in all but the top 35 Metropolitan Statistical Areas (“MSAs”) and, in those MSAs, to dramatically limit the areas where effective BRS coverage can be provided. The better solution – one supported by the record in this proceeding as well as Commission policy – would be to reduce the MSS allocation to the 2483.5-2495 MHz band, thereby eliminating the inevitable interference that MSS would cause to BRS.

I. ADOPTING GLOBALSTAR’S PROPOSAL IGNORES THE WIDESPREAD USE OF CHANNEL MDS-1 AND THE DESTRUCTIVE IMPACT ELIMINATING THE BRS-1 ALLOCATION WOULD HAVE.

Globalstar’s proposal is built on a series of stark misperceptions and flimsy rationale. Most significantly, Globalstar is dead wrong in assessing the current

² See Petition for Reconsideration of the Wireless Communications Association International, Inc., filed September 8, 2004 (“WCA Petition”); Consolidated Opposition to Petition for Reconsideration of WCA, filed October 27, 2004 (“WCA Opposition”).

³ See, e.g., WCA Opposition, p. 5 (requiring sharing “is a recipe for disaster”); Globalstar Opposition, p. 8 (“generally agrees [with BRS interests] . . . that co-frequency, co-coverage sharing is not feasible for MSS and BRS”); Nextel Communications’ Opposition to Petitions for Reconsideration of Globalstar LLC and Society of Broadcast Engineers, Inc., filed October 27, 2004 (“Nextel Opposition”), p. iii (BRS “is not compatible” with MSS); Sprint Opposition to Petitions for Reconsideration, filed October 27, 2004 (“Sprint Opposition”), p. 3 (“harmful interference . . . is likely to result from the Commission’s decision to place BRS Channel 1 and MSS operations in the same spectrum”); and Opposition of the BRS Rural Advocacy Group to Petition for Reconsideration of Globalstar LLC, filed October 27, 2004 (“Rural Opposition”), p. 6 (noting that both Globalstar and WCA had provided evidence of the “unavoidable presence of interference from operation of CDMA MSS downlink facilities and BRS-1 facilities in the same areas”).

widespread use of Channel MDS-1 and in minimizing the impact its proposal would have on BRS-1 licensees and consumers throughout the country. Though it now attempts to distance itself from such facts, Globalstar itself readily conceded in its Petition that “MDS-1 is already licensed *nationwide* [and] the assumption that BRS operations in the 2496-2502 MHz band are more likely to occur in urban areas is flawed.”⁴

The record in this proceeding demonstrates that use of BRS-1 is widespread and vital, and that the restrictions proposed by Globalstar would have a far-reaching destructive impact on BRS-1 operations in small rural as well as large urban markets. For example, the BRS Rural Advocacy Group, an assembly of eight video and broadband providers operating on MMDS and ITFS channels in sparsely-populated rural regions of the midwest United States, provided specific examples of its members’ current uses of MDS-1 spectrum, demonstrating in many cases that these offerings may be the only source for consumers to obtain broadband access or alternative multichannel video services.⁵ Globalstar’s proposal would result in the elimination of this spectrum in these rural areas where the need for such spectrum is no less than in larger markets.

But Globalstar’s proposal is not confined to eliminating service in just remote and rural markets. Nextel pointed out that Globalstar’s proposal would preclude BRS-1 operations in major metropolitan areas such as Fort Lauderdale, Charlotte, New Orleans and Nashville in the southeast, and many more throughout the country.⁶ Similarly, Sprint observed that its operations in a number of large metropolitan markets would be forced to shut down.⁷ BellSouth showed that its operations in four urban markets – and smaller

⁴ Globalstar Petition, p. 11 (emphasis in original).

⁵ Rural Opposition, pp. 2-4.

⁶ Nextel Opposition, p. 7.

⁷ Sprint Opposition, p. 6.

rural markets – also would be eliminated if Globalstar’s approach were adopted.⁸ As WCA rhetorically asked, “What does Globalstar suggest be done about those BRS channel 1 licensees that are today licensed in the other 900 MSAs and Micropolitan Statistical Areas, not to mention the even more rural areas of the country that do not fall within either definition?”⁹

Even in those remaining major metropolitan areas where BRS-1 service would not be eliminated, Globalstar’s proposal would result in a substantial reduction in the areas capable of being covered with a BRS-1 signal. As Nextel stated, “the proposed restrictions are so severe that they would deprive the BRS-1 licensees at 2495-2500 [MHz] of virtually all economic value.”¹⁰ WCA provided a technical showing that calculated the reduction in coverage area and described the effect as “draconian.”¹¹

Based on this overwhelming evidence, the FCC cannot believe Globalstar’s claim that its proposal would be “the least disruptive solution to existing consumers” when Globalstar’s proposal ignores the rights of incumbents.¹² The FCC cannot believe Globalstar’s assertion that there has been “20 years of non-use of MDS” when the record shows otherwise.¹³ The FCC cannot believe Globalstar’s accusation that “BRS is not willing to cooperate with other services” when the impact of Globalstar’s proposal would be to destroy MDS operations.¹⁴ The FCC cannot believe Globalstar’s characterization of its proposal as a “geographic separation” of BRS and MSS when the effect would be

⁸ BellSouth Opposition, p. 5.

⁹ WCA Opposition, p. 8.

¹⁰ Nextel Opposition, p. 5.

¹¹ WCA Opposition, p. 10.

¹² Globalstar Opposition, p. 7.

¹³ *Id.*, p. 6.

¹⁴ *Id.*, p. 7.

the wholesale decimation of the BRS-1 allocation.¹⁵ With these myths exposed, the very predicate for Globalstar's proposal disappears. Channel MDS-1 is being used across the country in markets large and small to provide video and broadband services, and all of these operations will be subject to destructive interference if Globalstar's thinly-disguised, one-sided approach is adopted.

II. GLOBALSTAR'S PROPOSAL CONTRADICTS COMMISSION POLICIES ENTITLING DISPLACED INCUMBENT LICENSEES TO BE "NO WORSE OFF" FOLLOWING RELOCATION.

As WCA¹⁶ and others¹⁷ make clear in this proceeding, because BRS-1 licensees are being forced to relocate from unencumbered spectrum in the 2150-2156 MHz band to shared encumbered spectrum in the 2496-2502 MHz band in order to accommodate advanced wireless services,¹⁸ Commission policy mandates that they be "no worse off than they would be if relocation were not required."¹⁹

Relying on a microwave relocation case, Globalstar argues that this policy does not require the Commission to hold MDS relocation spectrum for future use.²⁰ This reliance is misplaced.

Licensees would obviously be "worse off" if the Commission interpreted its policy in such a manner, as Globalstar argues.²¹ Heretofore, the Commission's relocation policy has been applied to microwave incumbents that can be "no worse off" simply by

¹⁵ *Id.*, p. 3. Cf. Rural Opposition, pp. 6-7 ("Of course, [Globalstar's proposal] is not a geographical solution, but one that would simply take spectrum away from incumbents who have, in some cases, been providing service to rural Americans for more than 15 years").

¹⁶ See WCA Petition, p. 4.

¹⁷ See Nextel Opposition, p. 5; Sprint Opposition, p. 2 ("BRS Channel 1 licensees were not subject to these types of co-channel interference sources in the spectrum from which they were involuntarily relocated").

¹⁸ See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, *Second Report and Order*, 17 FCC Rcd 23193, 23212-13 (2002).

¹⁹ Amendments to the Commission's Rules Regarding a Plan for Sharing Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8825, 8843 (1996).

²⁰ See Globalstar Opposition, p. 5.

²¹ *Id.*

replacing equipment at each terminus of the point-to-point link. However, given the widespread deployment of MDS-1 described in the record and the point-to-multipoint and two-way nature of the MDS service, replacing existing facilities would be extremely costly and would require disruption in service. Assuming the Commission retains the BRS-1 allocation in the 2495-2500 MHz band, incumbent MDS-1 licensees can be “no worse off” only if the Commission eliminates the co-primary MSS downlink designation.

Moreover, it is hypocritical for Globalstar to advocate eliminating spectrum slated for incumbent relocation when Globalstar itself admits that its need for 16.5 MHz of downlink spectrum is to accommodate “future growth.”²² In Globalstar’s view, Globalstar’s apparent and unproven “need” for more spectrum should supersede the fundamental rights of incumbent licensees to obtain the replacement spectrum to which they are entitled.²³ Aside from the dubious policy Globalstar would have the Commission adopt, this proposition has no bearing on the superior rights of displaced incumbents.

Also misleading is Globalstar’s argument that “BRS is the service that is least in need of the 2496-2500 MHz band segment” because BRS has an additional 148 MHz of spectrum allocated to that service.²⁴ This conclusion misses the point by confusing the allocation of spectrum to a *service* rather than the relocation of spectrum licensed to *incumbents*. Contrary to what Globalstar would have the Commission believe, the

²² *Id.*, p. 10.

²³ As WCA, Nextel and Sprint point out, the 2495-2500 MHz is not comparable to the existing spectrum allocation because, in addition to Globalstar, BRS-1 licensees will share that spectrum with ISM and BAS users. See WCA Petition, pp. 4-5; Nextel Opposition, pp. 1-2; Sprint Opposition, p. 2. Despite the Commission’s decision to reduce the spectrum allocated to BRS and EBS licensees in the 2500-2696 MHz band, BellSouth joins WCA in agreeing to accept the band plan adopted in WT Docket No. 03-66 insofar as the spectrum allocated to Channels BRS-1 and BRS-2 can actually be used. See WCA Opposition, p. 7, n. 19.

²⁴ Globalstar Opposition, p. 4.

amount of spectrum allocated to the BRS service as a whole is inconsequential to the rights of displaced incumbent licensees to be “no worse off.”

III. GLOBALSTAR’S CLAIM THAT IT “NEEDS” THE FULL 16.5 MHz OF DOWNLINK SPECTRUM IS BASED ON UNREALISTIC EXPECTATIONS.

Globalstar’s claim to the full 16.5 MHz of downlink spectrum in the 2483.5-2500 MHz band is premised on unrealistic expectations. First, as articulated in the WCA Petition²⁵ and the BellSouth Opposition,²⁶ Globalstar has been on notice since 1994 that the sole remaining CDMA MSS licensee may be required to relinquish spectrum. Yet despite this warning, Globalstar now complains that it needs the spectrum in order to satisfy future growth that undoubtedly and unwisely was predicated on the perpetual use of the full 16.5 MHz. Second, Globalstar has admitted that the Commission’s requirement in the *Order* that Globalstar share 3.1 MHz of uplink spectrum with Iridium in the L-band would preclude joint use and require one of the satellite operators to “cede access.”²⁷ With the uplink spectrum effectively reduced to 8.25 MHz, Globalstar can maintain the 1:1.4 relationship of uplink-to-downlink spectrum even if it loses access to the 2495-2500 MHz band. Third, as Nextel accurately observes, the Commission plainly stated that Globalstar’s continued use of the 2495-2500 MHz band is temporary: “The MSS allocation is maintained however in the upper portion [2483.5-2500 MHz], so MSS can make use of these channels *prior to deployment* of the new BRS operations in the band, and in geographic areas, such as remote areas where new terrestrial services are not

²⁵ See WCA Petition, pp. 12-15.

²⁶ See BellSouth Opposition, pp. 7-8, *quoting* Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, *Notice of Proposed Rulemaking*, 9 FCC Rcd 1094, 1112 (1994).

²⁷ See WCA Petition, p. 6, n. 17, *quoting* Globalstar Petition, p.6.

likely to deploy.”²⁸ Globalstar’s declaration of a “need” for the full 16.5 MHz in the 2483.5-2500 MHz band is an empty statement belied by the facts, its own statements and the law.

IV. GLOBALSTAR’S NEW PROPOSAL TO GRANDFATHER CERTAIN MDS-1 OPERATIONS IGNORES THE RIGHTS OF LICENSEES TO CONTINUE DEPLOYING NEW STATIONS.

Apparently sensing the desperate nature of its arguments, Globalstar resorts to making an alternative suggestion – that the Commission should allow relocation of MDS-1 to the 2495-2500 MHz band only if the MDS-1 licensee was serving consumers on the release date of the *Order*.²⁹ This outcome obviously would ignore the exclusive rights of BTA holders, who were granted 10-year licenses and acquired their spectrum rights at auction, and would call into question the investments in MDS operations made by BellSouth and other operators. As Sprint pointed out, “[t]o eliminate and/or relegate the geographic scope and operational utility of these licenses now would both upset Sprint’s investment expectations and severely undermine confidence in the Commission’s spectrum auction process.”³⁰ Moreover, should the Commission elect to auction BRS-1 spectrum (in those few cases where the spectrum is not being used or the BTA authorization was forfeited), interest in such an auction would be reduced if the spectrum remains co-primary with MSS downlink spectrum.

²⁸ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004), ¶27, n. 67 (emphasis added). Note, however, the Commission’s misunderstanding regarding the widespread use of Channel MDS-1 in remote areas. See, e.g., Rural Opposition, pp. 2-4 & Exhibit 1 thereto.

²⁹ See Globalstar Opposition, p. 7.

³⁰ Sprint Opposition, p. 6, n. 16.

Conclusion

Globalstar's proposal collapses under its own weight. Though Globalstar would prefer the facts to show otherwise, Channel MDS-1 spectrum is in use throughout the country, and any Commission-mandated termination or reduction in operations would result in massive disruption in service, uncertainty in investment expectations, and loss of confidence in the Commission's auction processes. Moreover, BRS-1 licensees – not Globalstar – are entitled to unencumbered spectrum, a point that would be true even if Globalstar could demonstrate any existing need for the spectrum or any expectation that it would be entitled to retain the full 16.5 MHz of downlink spectrum.

In light of the foregoing, BellSouth respectfully requests that the Commission reject Globalstar's proposal and instead eliminate the co-primary allocation for CDMA MSS in the 2496-2500 MHz band.

Respectfully submitted,

**BELLSOUTH CORPORATION,
BELLSOUTH WIRELESS CABLE, INC. and
SOUTH FLORIDA TELEVISION, INC.**

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Certificate of Service

I, Stephen E. Coran, hereby certify that on November 8, 2004, I caused a copy of the foregoing Reply of BellSouth Corporation, BellSouth Wireless Cable, Inc. and South Florida Television, Inc. to Consolidated Opposition to Petition for Reconsideration of Globalstar LLC to be served on the party listed below by U.S. mail, first class, postage prepaid.

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